



the families of American soldiers, and the public at large, regarding the welfare of our troops. Since the beginning of Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom, Mr. Charles has worked tirelessly to report on the dangers facing our troops sent into harm's way.

4. This action relates to a FOIA request (Ex. A) submitted to defendants AFIP and OAFME on October 28, 2008, seeking records regarding the types of injuries suffered by troops in Iraq and Afghanistan. Mr. Charles seeks this information to support his independent evaluation and reporting on the sufficiency of the body armor issued to American ground troops. Based on non-classified data already released by various DoD agencies, and Mr. Charles' own reporting, American troops are quite possibly being sent into harm's way with substandard ballistic protection from small arms fire.

5. This topic is of special and current public interest, especially considering that the Secretary of the Army recently recalled more than 16,000 sets of body armor following a DoD Inspector General audit. DoD Inspector Gen. Rpt. No. D-2009-047, Jan. 29, 2009. The audit found that the Army's first article testing for body armor protective inserts "were not consistently conducted or scored" and recommended that the Army "immediately identify and facilitate the return of" over 16,000 sets of body armor ballistic inserts. *Id.*, Results in Brief. Moreover, the report found that the Army did not have internal control procedures in place to ensure adequate oversight of the ballistic insert testing process or review of the testing results. *Id.* at 6. Thus there is adequate reason to suspect that the currently issued body armor might not provide adequate protection to our troops. Mr. Charles seeks records that would both verify and expand the data underlying the Inspector General's report.

6. Given the new Administration's expressed presumption in favor of disclosure with regard to FOIA requests, Mr. Charles is disappointed that his FOIA request remains outstanding. Despite numerous attempts to contact the agencies responsible for the records sought in Mr. Charles' FOIA request, the government has failed to respond in a timely manner.

### **PARTIES**

7. Plaintiff Roger G. Charles is a retired Marine Corps officer, free-lance journalist, editor of the journal DefenseWatch, and Vice-Chairman of the non-profit foundation Soldiers For The Truth, a separate 501(c)(3) organization. Mr. Charles seeks information from AFMES and AFIP to further his journalistic endeavors, and the mission of the Soldiers For The Truth, which strives to ensure that our military institutions and forces are efficient, effective, and capable of defending and protecting the United States against all enemies, foreign and domestic. Mr. Charles currently resides in Alexandria, Virginia.

8. Defendant DoD is a Department of the Executive Branch of the United States government. The DoD is an agency within the meaning of 5 U.S.C. § 552(f)(1).

9. Defendant OAFME and Defendant AFIP are bureaus within Defendant DoD, the federal agency that has control over the records Mr. Charles seeks. Defendant OAFME is the central medical examiner for defendant DoD and manages the Armed Forces Medical Examiner System ("AFMES"). Defendant AFIP is the central pathology laboratory for the DoD and has operational control over defendant OAFME and AFMES.

### **JURISDICTION**

10. This Court has both subject matter jurisdiction and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper pursuant to 5 U.S.C. §§ 552(a)(3) and (a)(4)(B), and because at least some of the records Mr. Charles seeks are believed to be situated in the District of Columbia.

11. Mr. Charles has exhausted his administrative remedies per 5 U.S.C. § 552(a)(6)(C)(i).

#### **RECORDS GENERATED BY AFIP AND THE OAFME**

12. AFIP, an institute established under 10 U.S.C. § 176, is the central pathology laboratory for the DoD. AFIP is located at the Walter Reed Medical Center in Washington, D.C.

13. In 1988, the DoD established the position of Armed Forces Medical Examiner (“AFME”), the OAFME, and the AFMES “to conduct scientific forensic investigations for determining cause and manner of death” of members of the armed services killed while on active duty. DODD 6010.16. The AFME is appointed by the AFIP Directors. DODI 5154.30. AFIP administers the AFMES and has operational control over the OAFME. (*Id.*)

14. Per 10 U.S.C § 1471, the Armed Forces Medical Examiner (AFME) has the authority to conduct a forensic pathology investigation to determine the cause or manner of death of an active duty service member. DoD Instruction 5154.30, issued March 18, 2003, instructs that the AFMES “shall conduct forensic evaluations for determining the cause and manner of death under applicable circumstances” for active duty troops. It also instructs AFIP and OAFME to maintain a “mortality registry” to support medico-legal investigations and perform epidemiologic analysis of military deaths. DODI 5154.30.

15. Under AFMES regulations, the Director of AFMES Operations shall provide operational support, diagnostic, and consulting services to the Armed Forces and shall render medico-legal opinions when requested. AR 40-57. Indeed, the operations department has, in fact, generated reports to the Armed Services regarding Operation Iraqi Freedom (OIF) casualty data and trends. One such report, “Marine Lethal Torso Injuries: Preliminary Findings 8/29/2005,” which is in the public domain, provides a detailed analysis of 93 Marines who died from a primary lethal injury to the torso in Operation Iraqi Freedom during the period from

March 19, 2003 to June 30, 2005. Upon information and belief, other reports of this type have been generated and currently exist at OAFME and/or AFIP. *See* ¶ 5, *supra*.

16. AFIP also prescribes specific medico-legal forms and charts for use in investigations and autopsies. Such records, such as “Firearm Wound Charts” are generated for every combat casualty from Iraq and Afghanistan, maintained by the MMSD of AFIP, and used to generate reports to the Armed Services, Federal Agencies, and Congress. Upon information and belief, such reports contain, *inter alia*, analysis of causes of death, wound evaluations, and/or recommendations regarding prevention measures.

17. In addition, the Medical Mortality Surveillance Division (“MMSD”) was established within AFIP and the OAFME. MMSD is tasked with the mission of establishing a mortality registry and “analyzing all active duty deaths for trends and preventable and modifiable risk factors.” (Ex. B.) The MMSD has conducted autopsies for every combat death in Afghanistan and Iraq with the goal of conducting thorough evaluations of all combat fatalities. Combat fatalities are catalogued, tracked, and analyzed at the MMSD mortality registry.

18. The purpose of the MMSD mortality registry is to identify trends in fatalities, the associated threats to servicemen, and to recommend changes in policy and procedure related to such analyses. Upon information and belief, the MMSD has generated records directly responsive to Mr. Charles’ requests.

19. Medico-legal information generated by AFIP and/or AFMES is governed by the Department of the Army’s Freedom of Information Act Instruction (AR 25-55) and 5 U.S.C. § 552. AFMES regulations state that “medico-legal investigations and individual records may be released to . . . members of the public if the release of records is not otherwise exempt under the Freedom of Information Act. Even records or documents subject to a Freedom of Information

Action exemption will be released unless there is a legitimate governmental or privacy interest in withholding them.” AR 40-57 § 4-7.

20. DoD also implements FOIA for all its bureaus and subdivisions. DoD expects all DoD personnel to “comply with FOIA . . . and DoD FOIA policy in both letter and spirit . . . to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.” 32 C.F.R. § 286.4(a).

#### **THE NEW ADMINISTRATION RENEWS ITS COMMITMENT TO OPENNESS**

21. On January 21, 2009, the White House issued a public memorandum stating that “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.” (Ex. C.) The memorandum further directs the heads of all executive agencies to “adopt a presumption in favor of disclosure in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.” The memorandum goes on to say:

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

22. Given the Executive Branch’s stated policy and the fact that the Defendants have not responded to Mr. Charles’ FOIA request, the Defendants should be directed to comply with FOIA and produce all responsive records forthwith.

#### **PRIOR FOIA REQUEST BY ROGER CHARLES**

23. On May 22, 2008, Mr. Charles submitted a FOIA request to the OAFME requesting “(i) Any and all records created from January 1, 2006 until December 31, 2007 relative to wound-data, munitions-effectiveness and personal body armor as recorded for U.S. military casualties from ballistic devices, i.e. bullets, and (ii) any and all records involving

forensic analysis of the effectiveness of personal body armor in both Iraq and Afghanistan for the specified time frame in defeating ballistic threats.” (Ex. D.) This “original” FOIA request was circulated in the OAFME for a period of over three months.

24. In August 2008, Mr. Charles retained Kirkland & Ellis LLP (“K&E”) to assist him with this FOIA request. K&E represents Mr. Charles *pro bono*. On September 9, 2008, K&E contacted Major Catherine With, staff legal counsel at AFIP, regarding the May 22 FOIA request. Maj. With stated that the request would be denied under the national security exemption.

25. As Maj. With confirmed, Mr. Charles’ original FOIA request was denied in a letter dated September 10, 2008 — over three months after Mr. Charles submitted the original request. (Ex. E.) Mr. Charles did not receive the denial letter until September 26, 2008. As a basis for denial, the letter stated that the requested records fall under one or more exemptions under 5 U.S.C. § 552(b). The letter neither denied that the requested records exist nor included an estimate of the volume of existing records that are responsive to the original request. *See* 5 U.S.C. § 552(a)(6)(F). The letter also did not state whether any portion of the exempt material was “reasonably segregable” from non-exempt portions of the record. *See* AR 25-55 § 5-203.

26. In October 2008, K&E attempted to contact Maj. With at AFIP to ascertain whether any responsive, non-classified information exists or if redacted versions of responsive documents could be produced per DoD FOIA policy. No AFIP representative returned calls to K&E. K&E then began preparations to submit an entirely new FOIA request.

#### **FOIA REQUEST AT ISSUE**

27. On October 28, 2008, K&E submitted a new FOIA request on behalf of Mr. Charles. The October 28, 2008 FOIA request is attached to this complaint as Exhibit A. The request contains specific and detailed categories of requested documents. (*Id.*) Generally,

Mr. Charles seeks information and documents from AFIP and/or OAFME analyzing the effectiveness of body armor in stopping ballistic rounds in Iraq and Afghanistan from January 1, 2006 to December 31, 2007. Mr. Charles' requests are reasonable, specific, and limited in scope and timeframe.

28. K&E made multiple attempts to contact AFIP regarding the new, October 28, 2008 FOIA request. On December 12, 2008, over 20 business days from the submission of the October 22, 2008 request, K&E was able to speak with Maj. With. Maj. With requested a facsimile copy of the October 28, 2008 request because, according to Maj. With, the original letter might have been misplaced due to an office reorganization. K&E complied and faxed a copy that day. AFIP later confirmed receipt of the FOIA request.

29. If an agency does not respond to a FOIA request within twenty business days, then, under 5 U.S.C. § 552(a)(6)(C), the requester's administrative remedies are deemed exhausted and may bring suit in District Court.

30. AFIP did not respond to the letter by January 14, 2008 — over 20 business days since K&E re-sent the October 28, 2008 request. Since January 14, 2008, K&E has made numerous attempts to contact Maj. With regarding the status of Mr. Charles' FOIA request. On January 30, 2009, an AFIP representative stated that they were working on a response, but did not give any specifics as to a date certain when a response would be received, whether any documents were found responsive to the requests, whether any of the requests would be denied, or whether any documents would be produced.

31. Mr. Charles' administrative remedies are exhausted and thus submits this complaint because neither AFIP, OAFME, nor DoD has responded within the statutorily allowed time period.



**COUNT I - VIOLATION OF THE FREEDOM OF INFORMATION ACT**

32. Plaintiff re-alleges and incorporates by reference the allegations set out in paragraphs 1 through 31 of this complaint.

33. Defendants' failure to make promptly available the records sought by Mr. Charles' request violates the FOIA, 5 U.S.C. § 552.

34. Mr. Charles has exhausted all administrative remedies with respect to his FOIA request under 5 U.S.C. § 552(a)(6)(C)(i) because AFIP has failed to respond to his request within twenty business days after receipt of his request, despite K&E's repeated efforts to solicit a response from AFIP.

**COUNT II - VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

35. Plaintiff re-alleges and incorporates by reference the allegations set out in paragraphs 1 through 34 of this complaint.

36. Defendants' failure to timely respond to Mr. Charles' requests constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA, 5 U.S.C. § 706. Defendants' failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

**REQUESTED RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court provide the following relief:

A. Enjoin Defendants from withholding all documents responsive to Mr. Charles' FOIA request that have not yet been produced.

B. Order Defendants to immediately and expeditiously process Mr. Charles' FOIA request and to disclose the requested records.


C. Order that this case be expedited in light of the government's non-response to Mr. Charles' request.

D. Award Mr. Charles his costs and reasonable attorneys' fees as provided by 5 U.S.C. § 552(a)(4)(E).

E. Grant such other and further relief as this Court may deem just and proper.

DATED: February 3, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonas R. McDavit", is written over a horizontal line.

Andrew M. Genser

Michael J. Gulliford

Jonas R. McDavit

KIRKLAND & ELLIS LLP

153 East 53d Street

New York, NY 10022

Tel. (212) 446-4800

Fax: (212) 446-6460

*Attorneys for Roger G. Charles*

The above attorneys represent the plaintiff in accordance with Local Civil Rule 83.2(g)

# **EXHIBIT A**

**KIRKLAND & ELLIS LLP**

AND AFFILIATED PARTNERSHIPS

Jonas R. McDavit  
To Call Writer Directly:  
212 446-6402  
jmcavil@kirkland.com

Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4811

(212) 446-4800

www.kirkland.com

Facsimile:  
(212) 446-4900

October 28, 2008

**Via Federal Express**

MAJ Catherine M. With, USA  
Office of Legal Counsel  
Department of Defense  
Armed Forces Institute of Pathology  
Washington, DC 20306-6000

**Re: FOIA Request on behalf of Roger G. Charles**


Dear MAJ With:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Kirkland & Ellis LLP ("K&E"), on behalf of Roger G. Charles, hereby requests documents described in Exhibit A.

Pleased be advised that the requested information is not intended for commercial use. As such we request a waiver of fees for this request because disclosure of the requested information is in the public interest and will contribute significantly to public understanding of the operations or activities of the DoD. Mr. Charles is a representative of the news media, currently working as Editor of *DefenseWatch*, a cyber-based newsletter (see [www.sftt.org](http://www.sftt.org)), and as a free lance journalist.

We appreciate your assistance with this matter and look forward to hearing from you as soon as possible and, in any event, within the period required by FOIA. If you have any questions, please feel free to contact me at (212) 446-6402.<sup>1</sup>

Sincerely,

  
Jonas R. McDavit

cc: Roger G. Charles

<sup>1</sup> If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information, and inform me of the appeal procedures available to us under FOIA.

Exhibit A

TOPICS


1. Any documents characterizing whether the personal body armor worn by soldiers in Iraq and/or Afghanistan performed according to specification in stopping bullets and/or shrapnel.
2. Any documents suggesting improvements or alterations to the personal body armor worn by soldiers in Iraq and/or Afghanistan.
3. Any documents suggesting or discussing the addition of side plates, or any other supplementary body armor, to the personal body armor worn by soldiers in Iraq and/or Afghanistan.
4. Any documents characterizing and/or analyzing whether the addition of side plates or other supplemental body armor to the personal body armor worn by soldiers in Iraq and/or Afghanistan could reduce mortalities among those soldiers.
5. Any documents characterizing and/or analyzing fatal wounds from bullets and/or shrapnel that were inflicted on soldiers wearing personal body armor in Iraq and/or Afghanistan.
6. Any documents illustrating, summarizing and/or characterizing the point of entry of any bullets and/or shrapnel that caused fatal wounds in soldiers wearing personal body armor in Iraq and/or Afghanistan.
7. Any reports, created between July 1, 2005 and December 31, 2007, relating to or entitled "Marine Lethal Torso Injuries."
8. Any reports characterizing and/or analyzing the relationship between personal body armor and lethal torso injuries sustained by soldiers in Iraq and/or Afghanistan.
9. Any documents concluding that a soldier in Iraq and/or Afghanistan died because that soldier's personal body armor failed to stop a ballistic device, such as a bullet or shrapnel.
10. Any documents characterizing, analyzing and/or demonstrating a fatal wound inflicted on a soldier wearing personal body armor in Iraq and/or Afghanistan that occurred in a region covered by that soldier's personal body armor.
11. Any Office of the Armed Forces Medical Examiner Firearm Wound Chart characterizing, analyzing and/or demonstrating fatal wounds from bullets and/or shrapnel that were inflicted on soldiers wearing personal body armor in Iraq and/or Afghanistan.
12. Any Office of the Armed Forces Medical Examiner Firearm Wound Chart Wound Chart characterizing, analyzing and/or demonstrating a fatal wound inflicted on a soldier wearing personal body armor in Iraq and/or Afghanistan that occurred in a region covered by that soldier's personal body armor.

13. Any Armed Forces Institute of Pathology (AFIP) Wound Chart (*see* <http://www.afip.org/consultation/AFMES/forms/index.html>) characterizing, analyzing and/or demonstrating fatal wounds from bullets and/or shrapnel that were inflicted on soldiers wearing personal body armor in Iraq and/or Afghanistan.
14. Any Armed Forces Institute of Pathology (AFIP) Wound Chart (*see* <http://www.afip.org/consultation/AFMES/forms/index.html>) characterizing, analyzing and/or demonstrating a fatal wound inflicted on a soldier wearing personal body armor in Iraq and/or Afghanistan that occurred in a region covered by that soldier's personal body armor.
15. Any data collected regarding any of the topics set forth above.
16. Any studies or analyses conducted by the Armed Forces Medical Examiners Systems ("AFMES") regarding any of the topics set forth above.
17. Any studies or analysis conducted by the Mortality Surveillance Division of AFMES regarding any of the topics set forth above.
18. Any studies or analysis conducted or overseen by Crag T. Mallak regarding any of the topics set forth above.
19. Any final medicolegal reports generated by AFIP or its subordinates between for military Medical Treatment Facilities or investigative agencies regarding any of the topics set forth above.

**SCOPE LIMITATION:**

- The above requests do not include records involving casualties from Improvised Explosive Devices, Rocket Propelled Grenades or other non-ballistic items.
- With the exception of Request No. 7, the above requests pertain only to documents created between January 1, 2006 and December 31, 2007.

# **EXHIBIT B**



# AFIP

ARMED FORCES INSTITUTE OF PATHOLOGY

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### AFMES Forms

- Autopsy Report Request Form
- Disposition of Subsequent Remains Form
- Organ Extended Examination Form
- AFRSSIR Supply Order Form
- AFDIL Case Work Request Form
- Toxicological Request Form
- Sudden Unexplained Infant Death Investigation Form

Home » Consultation » AFMES

## Medical Mortality Surveillance Division

To support the AFMES by maintaining the DoD the Medical Mortality Registry. The division is organized into two subdivisions, the "Alert" component, which is designed to rapidly detect mortality due to unexplained for infectious diseases, and the "Registry" component, which has the broader mission of analyzing all active duty deaths for trends and preventable and/or modifiable risk factors.



### AFMES Resources

- Autopsy Diagrams
- Autopsy Description Sheet
- Firearm Wound Chart
- AFRSSIR Specimen Destruction Request
- AFRSSIR Database Query
- DNA Collection Instructions
- Toxicological Shipping Guidelines

**Chief:** Lisa Pearse, MD MPH, CDR, MC, USN

**Address:** Armed Forces Medical Examiners Systems  
ATTN: Division of Operations  
1413 Research Blvd, Bldg 102,  
Rockville, MD 20850

**Commercial:** 301-319-0000

**DSN:** 285-0000

**Fax:** 301-319-2024

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Armed Forces Institute of Pathology (AFIP)  
 6825 16th Street NW  
 Washington, DC 20306-6000



# **EXHIBIT C**

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

January 21, 2009

January 21, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the *Federal Register*. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the *Federal Register*.

more

(OVER)

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This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

# # #

# **EXHIBIT D**

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PAGE 02

Roger G. Charles

2605 Russell Road, Alexandria, VA 22301-1359

(tel.)703-836-0384//sftteditor@aol.com

May 22, 2008

AFME Systems  
Officer of the AFME  
1413 Research Blvd., Bldg. 102  
Rockville, MD 20850

Via facsimile: 301-319-0635

Dear madam/sir:

Under the Freedom of Information Act (5 U.S.C. Section 552), I request copies of the following records be provided to me:

- Any and all records created from January 1, 2006 until December 31, 2007 relative to wound-data, munitions-effectiveness and personal body armor as recorded for U.S. military casualties from ballistic devices, i.e. bullets.
- This request specifically includes any and all records involving forensic analysis of the effectiveness of personal body armor in both Iraq and Afghanistan for the specified time frame in defeating ballistic threats.
- This request does not include records involving casualties from Improvised Explosive Devices, Rocket Propelled Grenades or other non-ballistic items.
- This request does include both records with data elements for individual casualties, and reports with cumulative data, whether periodic reports or one-time reports portraying summary data that may or may not reflect only individual casualty data.

I request a waiver of fees for this request because disclosure of the requested information is in the public interest since it is likely to contribute significantly to public understanding of the operations or activities of the DoD.

In order to help you determine my status for the purpose of assessing fees, you should know that I am a representative of the news media, currently working as Editor of *DefenseWatch*, a cyber-based newsletter (see [www.sftt.org](http://www.sftt.org)), and as a free lance journalist. This request is made as part of news gathering and not for commercial use. (I will provide upon request of my major journalistic products and awards.)

Please contact me as above should it be necessary to discuss any aspect of my request.

Sincerely,

  
Roger G. Charles

# **EXHIBIT E**

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PAGE 02



REPLY TO THE ATTENTION OF

**DEPARTMENT OF DEFENSE  
ARMED FORCES INSTITUTE OF PATHOLOGY  
WASHINGTON, DC 20306-6000**

September 10, 2008

Office of Legal Counsel

Mr. Roger G. Charles  
2605 Russell Road  
Alexandria, VA 22301-1359

Dear Mr. Charles:

This is in response to your Freedom of Information Act (FOIA) request, dated May 22, 2008, directed to the Office of the Armed Forces Medical Examiner (OAFME) which is a component of the Armed Forces Institute of Pathology (AFIP). Your request was received on June 17, 2008, and referred to me in my capacity as Legal Counsel, AFIP. This referral was received on and processed in accordance with the Freedom of Information Act (FOIA) 5 United States Code (U.S.C.) § 552.

Your request was for "any and all records created from January 1, 2006 until December 31, 2007 relative to wound data, munitions-effectiveness, and personal body armor as recorded for U.S. military casualties from ballistic devices, i.e. bullets." Specifically, your request includes "any and all records involving forensic analysis of the effectiveness of personal body armor in both Iraq and Afghanistan for the specified time frame in defeating ballistics threats...This request does include both records with data elements for individual casualties, and reports of cumulative data...."

The review has been completed and the referred documents are being withheld pursuant to the FOIA under the following Exemptions: Exemption (b)(1) protects from disclosure classified national security information concerning the national defense or foreign policy; Exemption (b)(2) (specifically, under the "high (b)(2)" profile) because the information, if released, would allow circumvention of the purpose of the information thereby substantially hindering the effective performance of a significant function of the Department of Defense; Exemption (b)(6) prohibits the disclosure of an individual's personal information viewing it as an invasion of their personal privacy; and, Exemption (b)(7)(a) which prohibits disclosure of information which would interfere with on-going law enforcement investigations.

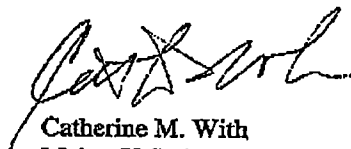
Because your FOIA request has been denied, you are advised of your right to appeal this determination to the Secretary of the Army. If you decide to appeal at this time, your appeal must be submitted within 60 days of the date of this letter. In your appeal, you must state the basis for your disagreement with the denial and the justification for the release of information associated with your request for this command. Your appeal should be

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addressed to: U.S. Army Medical Command, Attention: Freedom of Information/Privacy Acts Office (MCPA), 2050 Worth Road Suite 21, Fort Sam Houston, Texas 78234-6021, for forwarding, as appropriate, to the Office of the Secretary of the Army. Please enclose a copy of this letter along with your appeal. To ensure proper processing of any appeal the letter and the envelope should both bear the notation, "Privacy Act/Freedom of Information Act Appeal." If you have any questions, please contact me at (202) 782-2124 or by email at catherine.with@us.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Catherine M. With', written over a horizontal line.

Catherine M. With  
Major, U.S. Army  
Legal Counsel

cc: John Peterson, Chief, Freedom of Information/Privacy Act Office, U.S. Army Medical Command